

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MILLENNIUM LABORATORIES,
INC.,

Plaintiff,

v.

DARWIN SELECT INSURANCE
COMPANY,

Defendant.

Case No. 3:12-cv-02742-BAS-KSC

FINAL JUDGMENT

Trial Date: January 6, 2015

Action Filed: November 9, 2012

Upon consideration of all the evidence introduced in this action, the record of proceedings and all written submissions and arguments presented in connection with these proceedings to date, the Court enters the following Final Judgment:

IT IS HEREBY ORDERED ADJUDGED AND DECREED:

1. This action was filed by Millennium Laboratories, Inc. ("Millennium") against Darwin Select Insurance Company ("Darwin") concerning defense coverage in two underlying lawsuits, the *Ameritox* action and the *Calloway* action, under a liability policy issued by Darwin to Millennium. Millennium's complaint contains three causes of action: Declaratory Relief, Breach of Contract and Breach of the

1 Covenant of Good Faith and Fair Dealing.

2 2. The Court (Judge Huff, then presiding) granted summary judgment in favor
3 of Millennium on the Declaratory Relief and Breach of Contract causes of action.
4 Docket # 112. The Court (Judge Bashant, then presiding) subsequently reaffirmed
5 summary judgment, denying Darwin's motion for reconsideration. Docket # 211.
6 Those rulings are incorporated, as written, into this Final Judgment.

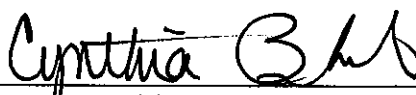
7 3. The Court also presided over a Phase I jury trial that took place on January 6,
8 2015 to determine whether Darwin breached the covenant of good faith and fair
9 dealing with respect to the requests for defense coverage in the *Ameritox* and
10 *Calloway* actions. The jury returned verdicts in favor of Millennium and against
11 Darwin on both counts. Docket #388.

12 4. The remaining issue in this action, the monetary amount of damages, has been
13 resolved by the parties by stipulations dated December 18, 2014 and January 12,
14 2015. Damages for Breach of Contract, but limited to those defense costs in the
15 *Ameritox* and *Calloway* actions through June 30, 2014, are \$8,195,316. (This figure
16 accounts for an offset of \$6,250,000 for defense costs that Darwin paid to
17 Millennium in those underlying actions following the summary judgment rulings.)
18 Damages for Breach of Covenant of Good Faith and Fair Dealing are \$554,683 in
19 *Brandt* fees.

20 5. Accordingly, Final Judgment is entered in favor of Plaintiff Millennium and
21 against Defendant Darwin on all causes of action, and in the amounts set forth in
22 paragraph 4, *supra*. Case is closed.

23 SO ORDERED.

24 DATED: 1/12, 2015

25 
26 Hon. Cynthia A. Bashant
27 United States District Judge
28